

Appendix
Table of Contents

Judgment (1st Cir. July 22, 2025)	1a
Memorandum and Order on Defendant Massachusetts Board of State Examiners of Plumbing and Gas Fitters Motion to Dismiss and Plaintiff’s Emergency Motion (D. Mass. Oct. 22, 2024)	3a
Amendment to Complaint (D. Mass. June 22, 2024)	10a
Defendant Massachusetts Board of State Examiners of Plumbing and Gas Fitters’ Memorandum of Law in Support of Its Motion to Dismiss (D. Mass. July 22, 2024)	16a
Response to Defendants’ Motion to Dismiss and its Memorandum of Law (D. Mass. Aug. 1, 2024)	26a
Brief by Plaintiff (1st Cir. Feb. 24, 2025)	32a

Appendix 1a

**UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT**

No. 24-1982

JOHN F. CARBIN,
Plaintiff - Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,
Board of State Examiners of Plumbers and Gas
Fitters; TOWN OF SAVOY,

Defendants - Appellees.

Before

Rikelman, Kayatta, and Aframe,
Circuit Judges.

JUDGMENT

Entered: July 22, 2025

Appendix 2a

Defendant-appellee, the Massachusetts Board of State Examiners of Plumbers and Gas Fitters (“the Board”), moved for summary affirmance of the district court’s dismissal of the amended complaint filed by *pro se* plaintiff-appellant John F. Carbin (“Carbin”). Carbin filed an untimely response, asking this court to deny the Board’s motion and to order the Board to respond to his brief.

After careful consideration, we affirm the district court’s decision holding that Carbin failed to state a cognizable constitutional claim for substantially the reasons stated in the district court’s decision. See Memorandum and Order, D.Ct. Dkt. 36. Accordingly, the Board’s motion for summary disposition is granted. See 1st Cir. R. 27.0(c).

By the Court:

Anastasia Dubrovsky, Clerk

cc:

John F. Carbin, Amy Spector, Katherine M. Fahey

Appendix 3a

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JOHN F. CARBIN, Plaintiff, v. TOWN OF SAVOY MASSACHUSETTS, COMMONWEALTH OF MASSACHUSETTS BOARD OF STATE EXAMINERS OF PLUMBING AND GAS FITTERS, Defendants.

Civil Action No. 23-
30092-MGM

MEMORANDUM AND ORDER ON
DEFENDANT MASSACHUSETTS BOARD
OF STATE EXAMINERS OF PLUMBING AND
GAS FITTERS MOTION TO DISMISS AND
PLAINTIFF'S EMERGENCY MOTION
(Dkt. Nos. 30 and 34)

October 22, 2024

MASTROIANNI, U.S.D.J.

Appendix 4a

I. INTRODUCTION

On September 12, 2023, Plaintiff, John Carbin, proceeding pro se, commenced this action against the Commonwealth of Massachusetts Board of State Examiners of Plumbing and Gas Fitters (“Board”). In his complaint, Plaintiff, who is not a licensed plumber, alleged the Board violated the rights of “citizens under the 14th Amendment . . . to do plumbing and to obtain a permit to do plumbing on their own property” by writing and enforcing a regulation that prohibits issuing permits to perform plumbing work to anyone other than a licensed individual. (Compl., Dkt. No. 1 at 4.) Plaintiff had applied for a permit to perform plumbing at a property he owns in Savoy, Massachusetts and the Town of Savoy denied the permit in accordance with the challenged regulations.¹ Plaintiff submitted an unsuccessful appeal to the Board and has also alleged the Board violated his rights when it refused his request for an exception to the licensing requirements that would permit him to obtain a permit and perform plumbing work at his own property.

Following a period of delay caused by improper service, the Board moved to dismiss Plaintiff’s Complaint. On May 1, 2024, this court granted the

¹ Plaintiff also named the Town of Savoy as a defendant and on October 11, 2023, Plaintiff filed a returned and executed summons stating the summons and complaint were served on the chairman of the Savoy Board of Selectman on September 26, 2023. As a procedural matter, counsel has not entered an appearance on behalf of Savoy and Plaintiff has not requested the clerk enter a notice of default as to Savoy. Substantively, Plaintiff cannot demonstrate any entitlement to relief from Savoy without first successfully challenging the validity of the regulations applied by Savoy.

Appendix 5a

motion as to “Plaintiff’s claims against the Board to the extent Plaintiff seeks monetary damages.” (Order of May 1, 2024, Dkt. No. 23.) The court also found that “[e]ven when read leniently the few facts alleged in Plaintiff’s Complaint are insufficient to support” such a claim. (*Id.*) Rather than dismiss Plaintiff’s remaining claims for declaratory or injunctive relief, the court granted him an opportunity to file an amended complaint containing sufficient facts to support his claim.

Plaintiff filed an Amendment to Complaint on June 3, 2024. (Dkt. No. 25.) The first two paragraphs set forth a timeline of Plaintiff’s interactions with the Board after the Town of Savoy denied his application for a permit to perform plumbing work at his property. He attempted to appeal the denial to the Board within the ten-day appeal period, but the Board returned his appeal because it was not submitted on the correct form. The Board provided the correct form, but Plaintiff asserts he did not receive it until after the appeal period had ended.² Rather than resubmit his appeal on the correct form and request an extension of time, Plaintiff notified the Board that “‘if your [sic] not going to accept that appeal as written then I will accept this as a denial and proceed as necessary.’” (Am. Compl. Dkt. No. 25 at 1.) The Board’s executive director responded to Plaintiff the following day, explaining that because Plaintiff did not file his appeal “in compliance with Board regulations, including the Board approved form, as required by 248 CMR

² Plaintiff says he applied for the permit on August 22, 2023 and sent his appeal to the Board on August 28, 2024. The Board’s letter explaining the return of the appeal was dated August 28, 2023 and Plaintiff received it in the mail on September 1, 2023.

Appendix 6a

3.05(6)(b)(1)”³ the Board was not able to take substantive action on Plaintiff’s appeal. (*Id.*) Four days later, Plaintiff filed this action. In the remainder of Plaintiff’s Amendment to Complaint, he argued that the Board has no legitimate basis for requiring that plumbing permits be issued only to licensed plumbers and such rules, therefore, violate rights protected under the Fourteenth Amendment.

The Board responded by filing another Motion to Dismiss for Failure to State a Claim. Plaintiff opposed the motion and, on September 19, 2024, filed an Emergency Motion, in which he requests the court issue an order permitting him to perform plumbing on his property. The Board opposed the Emergency Motion and argued that Plaintiff is unlikely to prevail in this action for the same reasons the Board has moved for dismissal. Specifically, the Board asserts that even after his amendment, Plaintiff’s complaint fails to plausibly allege that the Board has violated his rights to either substantive or procedural due process as protected under the Fourteenth Amendment. For the reasons that follow, the court dismisses Plaintiff’s Complaint, as amended on June 3, 2024, and denies Plaintiff’s emergency motion.

II. DISCUSSION

“The Due Process Clause of the Fourteenth Amendment prohibits a state from depriving a person of ‘life, liberty, or property, without due process of

³ Plaintiff contends that 248 CMR 3.05(6)(b)(1) “does not call out a specific form, only a ‘form approved by the board,” but does not allege that he sent his appeal in on a “form approved by the board” or that the form the Board required was not the “form approved by the board,” as described in the regulation.

Appendix 7a

law.” *Pagan v. Calderon*, 448 F.3d 16, 32 (1st Cir. 2006) (quoting U.S. Const. amend. XIV, § 1). “This guarantee has both substantive and procedural components.” *Id.* “[S]ubstantive due process protects individuals against state action that transgresses ‘basic and fundamental principle[s].’” *Kenyon v. Cedeno-Rivera*, 47 F.4th 12, 24 (1st Cir. 2022) (quoting *Amsden v. Moran*, 904 F.2d 748, 754 (1st Cir. 1990)) (second alteration in original). When a plaintiff brings a substantive due process challenge to the validity of a state regulation, the court must first determine whether the regulation infringes on a fundamental right. *Gonzalez-Droz v. Gonzalez-Colon*, 660 F.3d 1, 9 (1st Cir. 2011). If the state regulation interferes with a fundamental right, the regulation will be subject to strict scrutiny review; “otherwise, it is reviewed under the more lenient rational basis standard.” *Kenyon*, 47 F.4th at 24.

A right is fundamental if it is enumerated in the Constitution or “deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotation marks omitted). Plaintiff contends the challenged regulations interfere with his right to perform plumbing work on his own property. To the extent there is such a right, it is clearly not one of the fundamental rights identified in the Constitution or recognized by the Supreme Court. Since there is no fundamental right to perform plumbing work, the court presumes the regulations challenged by Plaintiff are valid and must uphold the regulations if they are “rationally related to a legitimate government interest.” *Cook v. Gates*, 528 F.3d 42, 55 (1st Cir. 2008). Under this standard, the court inquires only

Appendix 8a

whether there are “plausible reasons” for a statute or regulation, not whether those reasons have been articulated by the legislature or governing decision-maker. *F.C.C. v. Beach Comms. Inc.*, 508 U.S. 307, 313-15 (1993). “In other words, a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data.” *Id.* at 315. The regulatory requirement that only licensed plumbers can be issued a permit to perform plumbing work clearly satisfies this standard. As the Appeals Court of Massachusetts has recognized, regulation of “the installation of plumbing is rationally related” to a “valid legislative interest in protecting the health and safety of the public by providing for safe plumbing.” *Meyer v. Town of Nantucket*, 937 N.E.2d 990, 997 (Mass. App. Ct. 2010). Plaintiff’s substantive due process challenge is clearly unsupportable.

Plaintiff’s Complaint, as amended, also appears to assert a challenge under the procedural due process protections offered by the Fourteenth Amendment. “To establish a procedural due process violation, the plaintiff ‘must identify a protected liberty or property interest and allege that the defendants, acting under color of state law, deprived [him] of that interest without constitutionally adequate process.’” *Gonzalez-Droz*, 660 F.3d at 13. However, as an unlicensed individual, Plaintiff has no protected property interest in being able to obtain a permit to perform plumbing work. Further, even if Plaintiff had a protected interest, the procedural protections afforded to him were sufficient. *Id.* (“No rigid taxonomy exists for evaluating the adequacy of state procedures in a given case; rather, due process is

Appendix 9a

flexible and calls for such procedural protections as the particular situation demands.” (internal quotations omitted)). An appeal procedure was set out in a regulation and the Board returned Plaintiff’s appeal, rather than process it substantively, because Plaintiff failed to comply with the procedure and, when notified of his failure, elected to file this case rather than resubmit his appeal and request an exception to the filing deadline. These facts, as alleged by Plaintiff, fail to identify any way in which the Board’s appeal procedures failed to provide procedural due process.

III. CONCLUSION

For the reasons discussed above, the Board’s Motion to Dismiss (Dkt. No. 30) is ALLOWED as to all counts and Plaintiff’s Emergency Motion (Dkt. No. 33) is DENIED. The court further finds the dismissal of Plaintiff’s claims challenging the validity of the regulations forecloses his claims against the Town of Savoy. This case may now be closed.

It is so Ordered.

/s/ Mark G. Mastroianni
MARK G. MASTROIANNI
United States District Judge

Appendix 10a

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

John F. Carbin, Plaintiff, V Commonwealth of Massachusetts, ET AL And Town of Savoy	Civil Action No. 23-30092-MGM
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Amendment to Complaint

June 3, 2024

I applied to the town of Savoy for a permit and to do plumbing on my property on August 22. **Both** were denied. I then appealed to the Board of Plumbers on August 28, 2023. The Executive Director, Kenneth Peterson returned my appeal with my check and a letter dated 8/28/2023 stating "I have enclosed the correct form to fill out to appeal and inspectors decision. Please fill out the entire form and resubmit before the ten-day filing deadline." I received this letter on Friday September 1, 2023. This "ten-day-filing deadline" was up. I emailed Kenneth Peterson and stated that if your not going to accept that appeal as written then I will accept this as a denial and proceed as necessary. On September 7, 2023 I again emailed Mr. Peterson and stated "I have completed the paperwork for Federal court. Before I file I would like to offer a final chance to the board to acknowledge property owners rights to do plumbing on their own property. I will likely be filing next week or the week after if I don't hear back from you. Mr. Peterson

Appendix 11a

responded on September 8, 2023 with “As your appeal was not filed in compliance with Board regulations, including the Board approved form, as required by 248 CMR 3.05(6)(b), I cannot accept it, thus the Board will not be able to act on your matter substantively.” Note: CMR 3.05(6)(b)(l) does not call out a specific form, only a “form approved by the board”, further the idea that a constitutional challenge is limited to 10 days, a fee and a form unrelated to a constitutional challenge is preposterous.

In November of 2022, Mr. Peterson asked me for a copy of a letter that I sent to then Governor Baker regarding property owners rights and plumbing. I sent Mr. Peterson a copy of that letter. I didn’t hear back from Mr. Peterson. I emailed Mr. Peterson again and he on December 5, 2022 responded with “I did take the opportunity to read this. The State legislature makes the laws regarding these jurisdictions. They would be able to help you best with this information.” I wrote back to Mr. Peterson and stated that the board writes the CMR not the legislature. Mr. Peterson and the board took no action.

It is difficult to pinpoint the “text of the law or regulation” that specifically removed citizens rights. MGL 142 and CMR 248 is absent of acknowledging citizens rights. In actual practice a large amount of plumbing is done all the time without permits and is never inspected. The Boards consumer fact sheet from the states website states **“Only a master or journeyman plumber examined and licensed by the Board of State Examiners of Plumbing and Gas Fitters, with the proper permits issued by the local plumbing inspector, can perform plumbing work at your home or business”** and

Appendix 12a

“Permits for performing plumbing work are issued only to licensed plumbers”. The consumer fact sheet put out by the board is not a law or regulation however it does show the Board's position of said laws or regulation. Both statements from the Board's fact sheet as well as the enforcement of such takes away citizens rights and is truly at the heart of this complaint. I believe it is unconstitutional and there needs to be a constitutional exception for property owners who choose to get a permit and/or do their own plumbing on their own property.

The BOARD OF STATE EXAMINERS OF PLUMBERS AND GAS FITTERS (Board) was established pursuant to Massachusetts General Laws (MGL) chapter 13 section 36 thru 38. The Board pursuant to MGL Chapter 13 section 9(a) **does not** serve in the department of health, The Board pursuant to MGL Chapter 13 section 9(b) serves under the division of occupational licensure, a part of the Massachusetts Office Of Consumer Affairs and Business Regulation. The Board pursuant to MGL Chapter 142 Section 13 states “The examiners shall make and from time to time in a like manner alter, amend and repeal rules and regulations relative to the construction, alteration, repair and inspection of plumbing . . .”. The Law MGL 142 never gave the board the power to remove citizens rights when working on their own property. 248 CMR is made by the Board. 248 CMR 3.02 states the definition of a permit is “A written notice that the inspector grants to a **Plumber or Gas Fitter** to commence work on a given installation. The Permit may contain limitations and conditions of the work to be preformed. The uniform permit application form

Appendix 13a

approved by the board may be considered a permit after issuance by the inspector.” 248 CMR 3.05(1)(b) 7. states **“Permits to perform plumbing work shall be issued in compliance with the following: a. Permits shall be issued to properly licensed individuals only. Permits may not be issued to apprentices”** 248 CMR 3.05(1)(b) 8. states **“Permits to perform gas fitting work shall be issued in compliance with the following: a. Permits shall be issued to properly licensed individuals only. Permits may not be issued to apprentices”**. The Board of Plumbers exceeded their authority granted to them by the legislature under MGL 142 when it created 248 CMR 3.02’s definition and CMR 3.05(1)(b) 7 and 8 as listed above in bold. Said regulation violates citizens rights by removing their right to obtain a permit and to do their own plumbing on their own property. The second sentence of the 14th Amendment to the Constitution of the United States states “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unites States; nor shall any state deprive any person of life, liberty or property, without due process of law”. The state legislature would not be able to enact a law taking away rights of citizens from doing plumbing on their own property unless there was a significant nexus between the law and the hazard to public health and what they were trying to deter. In *Kelly v. Judge of Recorder’s Court*, 239 Mich. 204 the court said “Regulation of certain lawful trades, occupations, and business activities is a question for the Legislature. Its determination comes within the proper exercise of police power of the state unless affirmatively shown so unreasonable, oppressive, extravagant, and arbit-

Appendix 14a

rary as to needlessly invade property or personal rights as protected by the Constitution” The Board under the division of occupational licensure, a part of the Massachusetts Office Of Consumer Affairs and Business Regulation has no ligament reason for denying citizens rights to obtain a permit or to do their own plumbing. Dr. George H Bigelow the commissioner of public health for the commonwealth of Massachusetts submitted in House report No. 263 dated December 16, 1929 the following “The opinion of the Bureau of the United States Public Health Service at Washington is expressed by Dr. C.C Pierce, Acting Surgeon General, as follows: “Public health concerns itself only with the generalization that water should be brought to the consumer uncontaminated, and carried away from him with the wastes which he adds to it, without leakage or nuisance. The details of plumbing are not of public health concern.”

The use of the states “police power” to remove rights, liberty or freedom from citizens on their own property is within law makers (Legislatures) authority however there must be a significant link (nexus) between the law; public health and what the law is trying to accomplish. All other avenues should be viewed before the removal of citizens rights. In *Lochner v. New York*, 198 U.S. 45 the court said “The mere assertion that the subject relates, through but in a remote degree, to public health, does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his

Appendix 15a

person and his power to contract in relation to his own labor”.

Its problematic *to say the least* when a Board primarily of market participants self-servingly enacts a regulation that removes citizens rights and advances themselves financially. Further when viewing page 4 of the consumer fact sheet on the states website its suspect when trade associations are listed. Absence of a link or nexus between the regulation or law and a health or safety concern greater than that of other liberties that citizens currently have I believe the actions of the board taking away citizens rights to do plumbing and to obtain permits on their own property is un-constitutional overly oppressive and violates my rights as well as every other citizens in the state of Massachusetts who owns property and would like to do their own plumbing or obtain a permit.

I contacted the defense on May 13, 2024 and wrote that when this suit is over my intent is that citizens will be able to legally do plumbing on their own property and be able to obtain permits to do or have plumbing done on their property. She responded with “Thank you for reaching out. I don’t think we can necessarily come to any kind of agreement as to what claims you choose to pursue; that is for you to decide and plead”. I truly reached out in genuine good faith with plenty of time to discuss the same.

Respectfully Submitted

John Carbin Pro-se

Appendix 16a

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JOHN F. CARBIN,

Plaintiff,

v.

TOWN OF SAVOY,
MASSACHUSETTS,
COMMONWEALTH OF
MASSACHUSETTS
BOARD OF STATE
EXAMINERS OF
PLUMBING AND GAS
FITTERS,

Defendants.

Civil Action No.
23-30092-MGM

**DEFENDANT MASSACHUSETTS BOARD OF
STATE EXAMINERS OF PLUMBING AND GAS
FITTERS' MEMORANDUM OF LAW IN SUPPORT
OF ITS MOTION TO DISMISS**

July 22, 2024

Defendant Commonwealth of Massachusetts Board of State Examiners of Plumbing and Gas Fitters (the "Board") respectfully submits this memorandum of law in support of its motion to dismiss the Amended Complaint (ECF No. 25) pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. In his revised Complaint,

Appendix 17a

Carbin alleges violations of the Fourteenth Amendment by the Board and the Town of Savoy, Massachusetts (the “Town”) stemming from the Town’s decision to deny Carbin’s permit applications to personally install plumbing on his property, and the Board’s refusal to accept a letter Carbin submitted as an appeal from that denial. The purported claims against the Board set forth in the Amended Complaint (ECF No. 25) should be dismissed with prejudice where Carbin has not plausibly alleged, and cannot plausibly allege, any constitutional violation because: (i) the relevant statute and regulations have a rational basis; and (ii) the Board provided Carbin with ample due process.¹ Accordingly, this Court should

¹ The Board has construed the Amended Complaint as asserting a facial challenge on constitutional grounds to a state statute and/or regulation. To the extent Carbin is actually seeking judicial review of a decision of the Board in administering state law, his claims are barred for two reasons. First, final decisions of state administrative agencies are entitled to preclusive effect in federal court. See Rios-Pineiro v. United States, 713 F.3d 688, 692 (1st Cir. 2013) (“If the administrative agency ‘is acting in a judicial capacity . . . [and] the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.’”) (citations omitted); see also Universal Ins. Co. v. Off. of Ins. Com’r., 755 F.3d 34, 38 (1st Cir. 2014) (quoting Aunyx Corp. v. Canon U.S.A., Inc., 978 F.2d 3, 7 (1st Cir. 1992) (“Normally, decisions of administrative agencies are entitled to res judicata effect when the agency acted in a judicial capacity.”)); Diaz v. City of Somerville, 59 F.4th 24, 29-30 (1st Cir. 2023). Where, in Carbin’s own view, the rejection of his appeal by the Board is the equivalent of a “final decision,” and he failed to appeal that final decision pursuant to the Commonwealth’s Administrative Procedures Act, Mass. Gen. Laws c. 30A, § 14, the Board’s decision is entitled to preclusive effect and Carbin’s claim for judicial review is barred in this Court. Similarly, to the extent Carbin is of the view that this Court can step into the role of

Appendix 18a

Dismiss Plaintiff's claims against the Board, with prejudice.

BACKGROUND

At an August 22, 2023 meeting, the Town's Select Board denied Carbin's request for a plumbing permit to install plumbing on his property. Compl. 4 (ECF No. 1); see also Aug. 22, 2023 Select Board Meeting Minutes, *available at* <https://townofsavoy.com/wp-content/uploads/2023/09/2023-08-22-SB-Minutes-signed.pdf>. According to Carbin's allegations, which are taken as true for the purposes of this motion, see Arturet-Velez v. R.J. Reynolds Tobacco Co., 429 F.3d 10, 13 (1st Cir. 2005), Carbin submitted a letter to the Board on August 28, 2023, appealing the Town's decision. Amend. Compl. 1 (ECF No. 25). In response, the Board sent Carbin a copy of the appropriate appeal form and instructed him to submit it "before the ten-day filing deadline."² Carbin did not submit

judicially reviewing the final decision of a Massachusetts agency under G.L. c. 30A, he is mistaken. Any such claim is barred not only by this Court's lack of statutory jurisdiction but also by the Eleventh Amendment. See Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 106-07 (1984); see also M.G.L. 30A, § 14(1) ("Proceedings for judicial review of an agency decision shall be instituted in the [State] superior court.").

² Mass. Gen. Law c. 142, § 13 requires that "any person aggrieved by a ruling interpreting the rules and regulations [promulgated by the Board] under this paragraph . . . may appeal to the examiners in writing within ten days after such ruling[.]" The Board's regulations further provide appeals of permitting decisions by local inspectors "shall be in writing on a form approved by the Board[.]" 248 Code Mass. Regs. § 3.05(6). Carbin alleges that he received notice regarding the appeal form after the deadline to file such an appeal had passed. He does not

Appendix 19a

the appeal form; instead, on September 7, 2023, Carbin emailed Peterson and informed him that because the Board did not accept the appeal as written, he would treat it as a denial. Id. On September 8, 2023, Peterson responded that, because Carbin's appeal "was not filed in compliance with Board regulations, including the Board approved form, as required by 248 Code Mass. Regs. § 3.05(6)(b), [Peterson] cannot accept it, thus the Board will not be able to act on [the] matter substantively." Amend. Compl. 1 (ECF No. 25).³

On September 12, 2023, Carbin filed the instant action against the Board and the Town. In his initial complaint, Carbin alleged that the Board, along with the Town, denied him the right to personally install plumbing on his property in violation of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983. Carbin alleged violations of the Fourteenth Amendment and sought punitive damages against the Town and the Commonwealth. See Compl. 4-5 (ECF No. 1). On May 1, 2024, the Court granted the Board's motion to dismiss in part, explaining that: (i) Carbin's claims for monetary damages against the Board are barred by the Eleventh Amendment; and (ii) while Carbin alleged insufficient facts to state a claim for prospective relief under § 1983, he should be given an opportunity to amend his Complaint. (ECF No. 23). On June 3,

allege he requested an extension of the appeal deadline by the Board.

³ Carbin alleges that he exchanged other emails with Peterson, however, it is unclear how, if at all, these relate to the permit denial or Carbin's attempt to appeal said denial. Amend. Compl. 1-2 (ECF No. 25).

Appendix 20a

2024, Carbin filed an Amended Complaint, (ECF No. 25), in which he alleges the Board's regulations, including 248 Code Mass. Regs. §§ 3.02 and 3.05(1)(b)(7) & (8), are unconstitutional under the Fourteenth Amendment where they violate "citizens['] rights," and that, in adopting the regulations, the Board exceeded its delegation of authority under MGL c. 142, § 13.⁴

ARGUMENT

Carbin's claims against the Board should be dismissed under Rule 12(b)(6) for failure to state a plausible claim for relief. Leavitt v. Alnylam Pharm., Inc., 451 F. Supp. 3d 176, 181 (D. Mass. 2020) ("[A] complaint must contain 'sufficient factual matter' to state a claim for relief that is actionable as a matter of law and 'plausible on its face.'" (quoting Aschcroft v. Iqbal, 556 U.S. 662, 667 (2009))). Although Carbin appears to allege that Mass. Gen. Laws. c. 142, § 13, and Board regulations 248 Code Mass. Regs §§ 3.02 and 3.05(1)(b)(7) & (8), violate the Fourteenth Amendment to the U.S. Constitution, his claims fail where, assuming all facts stated in the Amended Complaint to be true, he has not presented any plausible basis on which the Court could find a constitutional violation.

⁴ The latter point is a state law claim that is barred by the Eleventh Amendment, as previously briefed by the Board and acknowledged by the Court. See Board Mem. in Supp. of MTD (ECF No. 20); May 1, 2024 Order on Motion to Dismiss (ECF No. 23).

Appendix 21a

I. The Amended Complaint Fails to Plausibly Allege a Substantive Due Process Claim Against the Board.⁵

To state a claim for a violation of substantive due process under the Fourteenth Amendment, a plaintiff must first show a deprivation of a constitutionally protected interest or right. Washington v. Glucksberg, 521 U.S. 702, 722 (1997) (holding it is a threshold requirement of a substantive due process claim that the challenged conduct implicate a fundamental right). Where a plaintiff attacks a statute or regulation based on interests that do not involve a fundamental right, however, the plaintiff must show that the statute or regulation lacks a rational basis. This is a high bar. To survive rational basis review, a law need only be “rationally related to a legitimate government interest.” Cook v. Gates, 528 F.3d 42, 55 (1st Cir. 2008).

Here, Carbin alleges that citizens have the right to perform plumbing work on their own properties, in part because citizens do so in many other states. But, to the extent Carbin alleges any constitutionally protected interest at all, he has not alleged a fundamental right. Glucksberg, 521 U.S. at 721 (Holding that “the Due Process Clause specially protects those

⁵ Any as-applied constitutional challenge fails where, as discussed *infra*, the challenged statute and regulations have a rational basis. Carbin does not appear to allege a claim under the Equal Protection Clause of the Fourteenth Amendment, but, even if he did, such claim would fail where he has not alleged that he was treated differently from any other similarly situated individual by the Board. Progressive Credit Union v. City of New York, 889 F.3d 40, 49 (2d Cir. 2018); *see also* Starlight Sugar, Inc. v. Soto, 253 F.3d 137, 145 (1st Cir. 2001).

Appendix 22a

fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and that, in substantive due process cases, courts require a "careful description of the asserted fundamental liberty interest." (internal citations omitted)). Therefore, to state a viable claim, Carbin must allege facts that could show Mass. Gen. Laws c. 142, § 13 and/or the attendant regulations lack a rational basis. He has not done so. Carbin's references to an out-of-state case and the century-old statements of a former Acting Surgeon General are unpersuasive. As the Massachusetts Court of Appeals concluded when examining a similar challenge, "[t]here can be no question that the Commonwealth has a valid legislative interest in protecting the health and safety of the public by providing for safe plumbing. It is equally beyond question that regulating the installation of plumbing is rationally related to this interest." Meyer v. Town of Nantucket, 937 N.E. 2d 990, 997 (Mass. App. Ct. 2010). Accordingly, Carbin has not plausibly stated a substantive due process violation stemming from the Board's enforcement of the statute and regulations that he cites.

II. The Amended Complaint Fails to Plausibly Allege a Procedural Due Process Violation Committed by the Board.⁶

The Fourteenth Amendment provides that "[n]o state shall . . . deprive any person of life, liberty, or

⁶ The Amended Complaint also still suffers from the same fatal defect as the original Complaint. Although the Court invited amendment under the Ex Parte Young exception to the Eleventh Amendment (ECF No. 23), in order to meet such an exception, claims must be brought under 42 U.S.C. § 1983. Plaintiff has

Appendix 23a

property, without due process of law.” U.S. Const. amend. XIV, § 1. Carbin invokes the Fourteenth Amendment and appears to allege violations of due process insofar as he appears to allege that his attempt to appeal from the permit denial should have been accepted by the Board. See Amend Compl. 1 (ECF No. 25).

To establish a procedural due process violation, a plaintiff must demonstrate a “protected liberty or property interest and allege that the defendant[], acting under color of state law, deprived him of that interest without constitutionally adequate process.” González-Droz v. González-Colón, 660 F.3d 1, 13 (1st Cir. 2011) (internal quotations omitted). Here, Carbin alleges that the process by which he was required to appeal the Town’s permit decision is “preposterous,” where it affords him only ten days to file an appeal using a specific form that was not identified in 248 Code Mass. Regs. § 3.05. Amend. Compl. 1 (DCF No. 25). However, where Carbin was provided with an opportunity to appeal before the Board, he was afforded all the process he was due.

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” Mathews v. Eldridge, 424

failed to cite that statute or to name a “person” against whom such claims are alleged. Amend. Compl. 1 (ECF No. 25). In other words, where Plaintiff still names a State agency as defendant, his claims remain barred by the Eleventh Amendment because a State agency is not a proper defendant under § 1983, and thus, the Ex Parte Young exception does not apply to agency defendants. Will v. Michigan Dep’t of State Police, 491 U.S. 58, 64-70 (1989). There is, however, no reason for the Court to permit additional amendment of Carbin’s Complaint where amendment would be futile because of all of the other defects described above.

Appendix 24a

U.S. 319, 333 (1976) (internal quotations omitted). Importantly, such an opportunity need not be perfect. See Fusion Learning, Inc. v. Andover School Comm., 609 F. Supp. 3d 5, 14 (D. Mass. 2022) (Recognizing that “although the predeprivation hearing . . . was deficient, Defendants correctly argue that [Plaintiff] has been provided a reasonable remedy: certiorari review in state court.”). “Where state procedures—though arguably imperfect—provide a suitable form of predeprivation hearing coupled with the availability of meaningful judicial review, the [F]ourteenth [A]mendment guarantee of procedural due process is not embarrassed.” Chongris v. Bd. of Appeals of Town of Andover, 811 F.2d 36, 40 (1st Cir. 1987). Carbin has not plausibly alleged that the Board failed to provide him with a meaningful opportunity to be heard on his request for a permit to perform plumbing work. Carbin could have properly appealed the Town’s decision to the Board, but failed to comply with the Board’s procedural requirements. Further, any “final decision” by the Board in an “adjudicatory proceeding” is reviewable in State court under Mass. Gen. Laws c. 30A. See M.G.L. c. 30A, § 14. Carbin was afforded ample process at the State level in connection with his application for a plumbing permit (in addition to the process he received at the Town level). Accordingly, the Complaint does not plausibly state a claim for deprivation of procedural due process against the Board.

CONCLUSION

For the foregoing reasons, the Court should dismiss all claims against Defendant Massachusetts Board of State Examiners of Plumbing and Gas Fitters’ Motion with prejudice.

Appendix 25a

Respectfully submitted,
ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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July 22, 2024

* * * * *

Appendix 26a

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

John F. Carbin, Plaintiff V Commonwealth of Massachusetts, ET AL And Town of Savoy	Civil Action No. 23-30092-MGM
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Response to Defendants' Motion to Dismiss
and its Memorandum of Law

Reference: 12(B)(1) court jurisdiction
12(B)(6) Failure to state a
claim upon which relief can
be granted

August 1, 2024

The defense claims that "Carbin has not plausibly alleged, and cannot plausibly allege, any constitutional violation because: (i) the relevant statute and regulations have a rational basis; and (ii) the Board provided Carbin with ample due process."

I do allege there are constitutional violations as stated in my claim and there is no rational basis for denying a citizens the right to obtain a permit or to do his/her own plumbing on their own property. Further the board's "due process" as called by the defense was merely a fraud in this particular case that the form is not tailored to a constitutional challenge and does not

Appendix 27a

apply. The board could have already made a decision however they chose to defer likely to keep this issue further away. The defense on page 3 of document 31 states in their footnote “. . . may appeal to the examiners” Under that which the defense submits the term “**may appeal**” also means that I have the option to not appeal or to take a different path. As previously stated, Rule 5.1 allows a constitutional challenge. The board was fore warned before filing this suit, they chose not to address it likely for their own personal gain. I believe this court has already determined it has jurisdiction over this case so I will only mention that in the Supreme Court has already ruled in North Carolina Board of Dental Examiners vs Federal Trade Commission that the board being mostly market participants, or “Private Actors” can only claim immunity if the board were subject to active supervision by the state for which this Board is not.

It does appear that the defense misunderstands, which could very well be my fault, one of the complaints with respect to the issuing of a permit. There is no rational justification a Citizen who intends to hire a plumber or who **intends to do work on their own property themselves** should be denied a permit. A permit is merely a piece of paper. There is no health or safety concern with a piece of paper. In the event the Citizen fires a plumber for whatever reason he can just hire another plumber without paying more for another permit. The current law requires the licensed plumber who is hired by the owner to get the permit and it's not transferable. The property owner authorizes the plumber to get a permit and has the authority to terminate a permit under 248 CMR. 21 3.05(d) 1. Taking away the rights of the

Appendix 28a

property owners to hire and fire or contract without being penalized by the permitting authority violates his constitutional rights guaranteed by the 14 amendment and due process. *Lochner v. New York* (fundamental rights and economic liberty).

The defense on page 5 of document 31 states “the Commonwealth has a valid legislative interest in protecting the health and safety of the public by providing safe plumbing. It is equally beyond question that regulating the installation of plumbing is rationally related to its interest.” This text was taken from *Meyer v. Town of Nantucket* and I believe it to be factual, However the mere Inspection and testing of the work satisfies any and all health and safety concerns regardless of who actually completed the work. This was ruled in *Meyer v. Town of Nantucket* upon final appeal. The defense fails to state the actual health and safety concerns about property owners (citizens) installing their own plumbing. They also do not reference any risk assessments or documents about what specific task(s) present a concern. If such documents do exist, where are they and when were they done? Plumbing is done in ALL states by property owners all the time including Massachusetts. The plumbing that is done by property owners in Massachusetts isn’t inspected and it just doesn’t seem to be a problem. How is gluing plastic pipes together such a risk to public health. How do the risks in plumbing compare to other things that citizens are allowed to do like mowing their lawn, working on their car or electrical wiring where one can be electrocuted and die in seconds. The Merrimack Valley gas explosion wasn’t done by a homeowner it was done by professionals. That cost over **1 billion Dollars** and

Appendix 29a

one death. Fires and explosions were everywhere. The inspector in Mr. Meyers' case and the hoard required that all plumbing must be removed and replaced by a plumber. On final appeal the court ruled that Mr. Meyers did not have to have his plumbing removed and replaced. Only once his plumbing was inspected and only the parts of plumbing that were not code compliant needed to be corrected. I only ask the same for every other citizen who chooses to do plumbing on their own property. Some individuals are more than capable of doing their own plumbing and complying with the plumbing regulations in Massachusetts such as an optician named Mr. Meyers, Auto-Mechanics, Farmers, naval mechanics, homeowners hooking up their gas grill, RV mechanics and Aviation mechanics to name a few. Aviation mechanics are allowed to do all the plumbing on aircrafts but no plumbing in their homes in Massachusetts. A Master Plumber can't do any plumbing under his license on aircraft. Enlisted personnel right out of high school are repairing aircrafts and military equipment with only minimal training and supervision to defend our freedom. There is no legitimate health or safety reason homeowners can't legally do their own plumbing. It seems if the state was truly concerned about health and safety, they would allow citizens to get their plumbing inspected after they completed it.

With reference to plaintiffs amended complaint on page 1 line 27 the defense on page 6 of document 31 states "Here, Carbin alleges that the process by which he was required to appeal the towns permit decision is "Preposterous,". This is a false statement, and I would caution the defense to correctly and accurately

Appendix 30a

quote people. I additionally request to consider when the defense submits false statements the entire Motion and memorandum should be brought into question.

Building or working on one's own home and property has been a long-standing fundamental right and part of our liberties which we have enjoyed for a couple hundred plus years. The right to build or establish a home¹ began with the frontiersman when they forged out into the open land. These traditions go back to a time before the United States was established. Congress passed the homestead act in 1862. In the late 1800's plumbing was first regulated. In Massachusetts at that time less than one percent of all households had plumbing. Today education, materials, and the ability to learn how to do anything is right at our fingertips. When the law was first made by the plumbing board only a plumber could install the lead pipes to poison our children under the age of six and contaminate the water.

There is no reason today citizens of all races, gender and social class can't do most jobs themselves and enjoy their freedom, liberty and self-satisfaction of using their own hands to do plumbing. Just as the frontiersman did. It is but a mere fraction of establishing, building or maintaining a home.

I respectfully request that the defenses motion to dismiss be denied and a mediation or judgment be scheduled. I do not object to the defense submitting another memorandum or response.

¹ The Constitutional Right to "Establish a Home"
<https://www.gwlr.org/wp-content/uploads/2022/06/90-Geo.-Wash.-L.-Rev.-632.pdf>

Appendix 31a

Respectfully submitted;

John Carbin

Pro se

Reference:

https://openyls.law.yale.edu/20.500.13051/9964/52_120YaleLJ1734_2010_2011_pdf?sequence=2&isAllowed=y

Appendix 32a

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

No. 24-1982

JOHN F. CARBIN,
Plaintiff - Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,
Board of State Examiners of Plumbers and Gas
Fitters; TOWN OF SAVOY,

Defendants - Appellees.

Brief by Plaintiff

February 24, 2025

Forward

I dedicate this brief to Dr. George Bigelow and Charles W. Hull. Dr. Bigelow and Hull are responsible for the house minority report dated January 1930 which best articulates that the installation of plumbing is not a health and safety concern.

I additionally thank Ernst J. Meyer and Valdemiro Pina. I learned much from your cases, your efforts were not in vain.

* * * * *

Appendix 33a

Introduction

I believe that working on one's own property in any capacity is a Constitutional right. The board enacted a regulation that I believe is overly oppressive and violates the 14th amendment to the Constitution of the United States. This court does not need to determine if plumbing is a Constitutional right in order for my rights to have been violated. The court only needs to determine that the regulation was enacted in an unjustly or unlawful manner. If the court determines that doing plumbing on ones' own property is a Constitutional right or the regulation was created in an unjustly manner then my as well as about three million property or homeowners; Constitutional rights were and are being violated.

Massachusetts is the only state in the nation that doesn't allow property owners to legally do plumbing on their own property. The regulation in Massachusetts was created by a group of market participants known as the "Board of State Examiners of Plumbers and Gas Fitters" (Board). Within the states hierarchy the Board falls under the Division of Occupational Licensure and the Office of Consumer Affairs and Business Regulation. According to their website they protect and empower consumers through advocacy and education, and ensures a fair playing field for the Massachusetts businesses its agencies regulate. The board overreached its authority when it removed the rights of Massachusetts property owners to do their own plumbing on their own property. The Board additionally overreached its authority by not allowing property owners to pull or have permits in their own name (Appendix Page 2). Both are acts of self-

Appendix 34a

preservation by the Board in order to hold on to that power.

In 1887 Lord Acton wrote “Power tends to corrupt, and absolute power corrupts absolutely”.

I am a pro se Plaintiff-Appellant. Imagine for a moment if the Massachusetts Bar Association made it unlawful for citizens in Massachusetts to represent themselves in federal court. Some judges would be pleased to only deal with lawyers. I truly understand where they’re coming from. The Board, in a sense, took away citizen’ rights to “represent” themselves within the curtilage of their own home. This case challenges the Boards overreach.

The beginning of this challenge or claim was driving to the Town of Savoy’s town hall and participating in an open meeting where I requested and was denied a permit and the ability to personally install plumbing on my own property in a house that I am personally building for myself. The towns board was not unsympathetic, and although I was denied a permit, they did express an opinion that was similar to mine with regards to the installation of plumbing by property owners on their own property. Please note there are two separate challenges or claims the first circuit dismissed, I believe the dismissal was without cause. The two challenges or claims are the ability as a home or property owner to be able to get a permit in his/her name and the ability to personally install plumbing on his/her own property. There are no constitutional exceptions in the regulation created by the board that allows either. I appealed the towns decision to the Board (Appendix Page 4). The defense and I have a difference of opinion on how this went down. I claim my appeal to the Board was denied.

Appendix 35a

The defense claims I didn't fill out the proper form (Appendix Page 3) approved by the Board so the Board doesn't have to even consider the constitutionality of the same. In their eyes I was given due process (Appendix Page 6).

The Permit

There is no health or safety concern with a piece of paper. The current law requires the licensed plumber who is hired by the owner to get the permit (Appendix Page 2). The permit is in the name of that plumber and is not transferable. The property owner has the authority to terminate the permit (Appendix Page 5) but doesn't have the right to have the permit in his or her name. Taking away the rights of the property owners to hire and fire or contract without being penalized by the permitting authority violates his constitutional rights guaranteed by the 14 Amendment and due process. In the event another plumber is needed for whatever reason the current regulation would require a new permit be issued costing the contractee to pay another permitting fee. *Lochner v. New York* (fundamental rights and economic liberty) (Appendix Page 5). The defense has never responded or addressed this issue.

Appeal to the Board

As stated in the Introduction, the defense or Board and I have a difference of opinion on the appeal. The appeal was answered by the defense in Document 31 dated 7/22/24 when the defense stated "(i) the relevant statute and regulation have a rational basis" (Appendix Page 7). Note: the statute, General Laws Chapter 142 does not remove property owners' rights only the regulation created by the board does.

Appendix 36a

First Conflict of Interest

A conflict of interest exists when the board (market participants) have a direct financial interest in the outcome of the appeal. Imagine a blue bucket with eight jobs in it and there are four plumbers who pull their jobs out of this bucket. Each plumber takes turns pulling jobs from the bucket. Now imagine a homeowner wants to take their job out of the bucket and do it themselves. There would be one less job in the bucket. One of the plumbers would only get one job. Each job is worth money. When the homeowner took his job out of the bucket, one of the plumbers lost money. The bucket is the state of Massachusetts. The majority of plumbing board members are market participants. They as well as all other plumbers get their money out of that bucket. Determining whether I can pull my job out of the blue bucket is a direct financial conflict of interest for the board members. If they allow me to do my own work they lose money.

The Statute and Regulation

The statute (MGL 142) is capable of being understood by reasonable well-informed persons in two or more different senses, it is ambiguous. (Appendix Page 8) I have spoken with two state regulators and they have agreed there is nothing in the statute that removes a property or homeowners right to install plumbing on their own property.

Second Conflict of interest

A conflict of interest exists when the board (market participants) made the regulation (248 CMR, Appendix Page 2) that they directly profit from by not allowing home or property owners to do their own

Appendix 37a

plumbing on their own property. Imagine that blue bucket again. The bucket is filled with jobs. The Board made the rule that only licensed plumbers, can pull jobs from the bucket. The majority of board members are plumbers so they can pull from the bucket. The regulation requires that I put my job (Money) in that bucket for the plumbers to pull out. This again is a direct financial conflict of interest for the board members when they created and upheld the regulation.

Elimination of the competition

Third Conflict of Interest

When the Board made the regulation that only a plumber licensed by them can perform plumbing, they eliminated the competition. The competition being the home or property owner. Home or Property owners are an entire class of people that are capable of doing the work themselves. There are a number of reasons they may want to do the plumbing themselves for instance; they don't want to deal with another contractor that rips them off, they want it done right, in a timely manner or maybe they just want to save some money. The Board took that right or liberty away from property owners when it made the regulation (Appendix Page 2). The board again has a direct financial interest to having more jobs in the bucket. By eliminating the competition, the cost-of-living increases and the board profits from this either individually or as a class. This likely violates the Federal Trade Commission Act and other Acts the FTC enforces (Appendix Page 9, *North Carolina State Board of Dental Examiners v. Federal Trade Commission*). In my culture, social and financial class, it

Appendix 38a

is not uncommon, unsafe, or harmful to do one's own plumbing. It can actually be quite rewarding and add to the quality of my life.

Health and Safety

The defense referenced on page 5 of document 31 *“the commonwealth has a valid legislative interest in protecting the health and safety of the public by providing safe plumbing. It is equally beyond question that regulating the installation of plumbing is rationally related to its interest.”* I responded to this in document 32 dated August 1, 2024(Appendix Page 10). The defense to date has never stated what the actual health and safety concerns are. Further it was not the Legislature that took away the rights of property owners, it was the Board that chose to corner the market. In document 23 of my amended complaint dated June 3, 2024, I mention a statement from an acting surgeon general. In reference to that the defense states in document 31 page 5 “Carbin’s references to an out-of-state case and a century-old statements of a former Acting Surgeon General are unpersuasive.” The defense however has not submitted anything newer. I submit with this brief, on the flash drive, house report 263 dated January of 1930 for consideration. In it, starting on page 24 (Appendix Page 11 thru 16) you will find some things that probably are out dated. Until such time as another independent study can be done by impartial participants, I ask the court to consider this as it is; “an unbiased report from the state”. This report and the references in it are from Harvard Doctors, Harvard Professors, Assistant Professor of Sanitary Engineering and an Acting Surgeon General all of which are truly impartial, without a conflict of

Appendix 39a

interest and not making money off the installation of plumbing. There may very well be a legitimate concern the state has with respect to the installation of plumbing but the “Idea” that property or home owners will create a health and safety risk is unfounded. The statistics and numbers just don’t show how the regulation has any value with respect to who installs plumbing. Plumbing is done every day in Massachusetts and throughout the country by home or property owners and there are no issues. Perhaps the “Health and Safety” concerns were manufactured by the board or by plumbers who have a financial interest in the installation of plumbing. The regulation in order to be lawful must have a connection or nexus (Appendix Page 17) between what the state is trying to accomplish and the regulation. The state claims they are keeping people safe by taking away citizens’ rights to do plumbing on their own property. The regulation fails in that it is ineffective and there no actual health or safety concerns.

Southwick is a town in Western Massachusetts similar to many other towns and small cities in western Massachusetts. In the years between 2006 thru 2010 there was an average of 2960 single family homes (Appendix Page 18). Between 2019 thru 2021 there were an average of 77 plumbing permits pulled (Appendix Page 19). The purpose of difference in the dates was to more accurately compute better statistics. If you divide the number of single-family homes by the number of permits pulled you will get 38. One slight problem I had with the Freedom of Information request was the number of permits also included commercial, industrial and new homes being built. If the town was able to remove the permits of

Appendix 40a

the commercial, industrial and new homes being built the computed number would be **more** than 38. What is the significance of 38? The average water heater lasts less than 20 years. All the plumbing in a house doesn't generally last 38 years before a permit is needed. A lot of plumbing is being done without permits in Southwick by someone without permits or inspections. This work is done either by professionals or property owners. The numbers in other cities and towns are likely equal. Why hasn't the board validated the regulation it created to ensure it is effective? If health and safety of unregulated plumbing is truly a concern for the commonwealth with regards to plumbing then the plumbing inspectors throughout the commonwealth should inspect every house that hasn't had a permit issued to it in the past twenty-five or thirty years. The regulation has failed and it's not a problem because there is no real health and safety concern. This validates that the minority House report number 263 dated January of 1930 is correct and accurate when it states "there is no immediate relationship between health, public or private, and plumbing". There is no nexus between the regulation and protecting the health and safety of citizens. The regulation fails the nexus test. There is nobody even checking to see if the jobs are going in the blue bucket. I cannot find any statistics, risk assessments or reports regarding numbers submitted by the commonwealth justifying the taking of property owners rights with regards to health and safety. It is problematic that the Board which has a financial interest to claim something is dangerous and not explain what the actual dangers are and how dangerous it is relative to other things we already do. If risk assessments do exist that were done by engineers without a financial

Appendix 41a

interest, why haven't they been produced in the form of an open and transparent government? There is no real concern with the installation of plumbing by property owners other than what is already stated in the house report. All of which have nothing to do with whom actually performs the work.

Constitutionality

If the first four sections of this brief weren't enough to persuade you in believing my or our constitutional rights in Massachusetts were abridged by the board when it made the regulation, then I ask what is freedom and Liberty? The constitution was written in a generalized manner. Over the course of time various things have been found Constitutional and Unconstitutional. Some of these decisions have changed. Arguments can be made on both sides. Courts ultimately decide what is or isn't Constitutional. Relative to permits being issued to home or property owners, or the installation of plumbing on one's own property by home or property owners, should it be a constitutional right or should you just consider the problematic nature of the previous sections of this brief? I am not writing anything you don't already know. When considering this appeal, please consider that work any work within the curtilage of a citizens own home should be considered sacred and the bar for government to regulate what one can or cannot do within the curtilage of that citizens home must be high. If the state has a legitimate health or safety concern then the permitting process is more than adequate to protect the states interest as it is done in almost all the other states. Anything more than that is an intrusion in a citizen's home and on those citizens Constitutional rights and liberty.

Appendix 42a

Desired Outcome

I respectfully ask this court to find the Board exceeded its authority with respect to the regulation that permits are only issued to Plumbers. The regulation should require all permits be issued in the name of the property owner. This enables property owners to contract freely.

I respectfully ask this court to find the Board exceeded its authority with respect to the regulation they created where only plumbers can perform plumbing work. I ask this court to require the Board to incorporate a Constitutional provision in the regulation that allows property owners to do their own work on their own property.

I respectfully ask the court to order the Town of Savoy to issue a permit to me so that I may begin the plumbing in the house that I am building for myself that I so desperately need.

Conclusion

I have not had the opportunity to question the board and other state employees in depositions. As a pro se litigant, I would likely be over my head more than I already am and I am not sure at this point if it is even necessary. There are however a few unanswered questions the Board should have to answer. For example, are the Board members or members of their family's part of any organizations such as business, labor or partnerships and how about contracts that they have? What other interests or groups do they belong to or have? Are there more conflicts of interest than are already pointed out in this brief? With respect to the Board this includes both past and present members. Who refers them to

Appendix 43a

the Governor for appointment? Why was the “Trade Associations” address and numbers on the previous Boards consumer fact sheet (copy on the flash drive). Its problematic to say the least putting market participants in charge of any board that can create regulations that can abridge or take away citizens’ rights for their own personal gain. This Board in 1916 was under the control of the Board of health. It was moved out of the board of health because it doesn’t belong there. There is no health and safety concerns that warranted it to be there. It’s a conflict of interest, corruption, monopolization its absolute power and it violates my and our constitutional rights.

Remember that blue bucket? The cover of this brief and the color of the flash drives are all blue. Fed. R. App. P. 32(a)(2) and 32(b)(1) is likely to aid justices to distinguish at a glance who wrote what. Blue means produced by the appellant. Pro se parties are not required to do this but I think it is important. The reason I did this is because it doesn’t seem unreasonable. If the instructions are clear even a pro se litigant can follow them. If the regulation for plumbing is clear property owners can do their own plumbing. That’s not to say I haven’t missed something, I have. I am sure the defense will find and point out all of my short comings in this case, just as a plumbing inspector would find everything, I did wrong and have me correct it. This is what is already done with plumbers.

I have included with this brief a blue flash drive with additional information. I ask that it be considered for what it is.

Appendix 44a

I value the Constitution, freedom and liberty. You are probably more familiar with the 14th Amendment and the Constitution than I will ever be. I believe that my rights as well as the rights of all other home or property owners have been abridged by the Board. I can't recite any case law that is exactly like this.

The house I am building is in desperate need of plumbing. I cannot understate this.

As stated in my initial appeal "my trust and faith is with you to be just".

Respectfully Submitted

John Carbin

Pro se